

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #5	CCRB Case #: 201509029	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 10/16/2015 3:50 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 4/16/2017	EO SOL 4/16/2017	
Date/Time CV Reported Sat, 10/17/2015 12:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/22/2015 11:49 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Diaz	03864	948884	075 PCT
2. POM Sean Keegan	12338	954994	PBBN
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Timothy Cecchini	00613	943068	075 PCT
2. Officers			
3. POM Gabriel Mendez	13465	955183	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean Keegan	Force: PO Sean Keegan used physical force against § 87(2)(b)	
B. An officer	Force: An officer used physical force against an individual.	
C.POM John Diaz	Force: PO John Diaz used physical force against § 87(2)(b)	
D.POM John Diaz	Discourtesy: PO John Diaz spoke discourteously to § 87(2)(b)	
E.POM John Diaz	Force: PO John Diaz used physical force against § 87(2)(b)	

Case Summary

On October 17, 2015, § 87(2)(b) filed this complaint with IAB via phone on behalf of her son, § 87(2)(b) generating log number 15-31672. § 87(2)(b) did not witness the incident. The complaint was received at the CCRB on October 22, 2015, via log number 2015-31814. § 87(2)(g)

There is video footage of the incident, and the relevant one minute section of the video is embedded below (See also Board Review 16). The full four minute video is located in investigative action # 91 and is of slightly better quality than the embedded footage (See Board Review 02). Body camera footage was recorded after the incident by PO Michael Fernandez of the 75th Precinct, but the footage does not show any of the allegations (Board Review 19).

§ 87(2)(g)



201509029_20160122_1013_DM.mp4

On October 16, 2016, § 87(2)(b) observed PO Sean Keegan of Patrol Borough Brooklyn North pursue § 87(2)(b)'s cousin, § 87(2)(b) near § 87(2)(b) in Brooklyn. PO Gabriel Mendez of Patrol Borough Brooklyn North also pursued § 87(2)(b) along with two school safety agents, § 87(2)(b) and § 87(2)(b). PO Keegan caught up to § 87(2)(b), pushed him against a nearby fence, and pulled him to the ground (**Allegation A**). A crowd of approximately 100 high school students congregated in the vicinity of PO Keegan and § 87(2)(b) during this interaction, and Sgt. Timothy Cecchini and PO John Diaz of the 75th Precinct along with an unknown number of additional uniformed officers arrived to conduct crowd control duties. § 87(2)(b) observed an unidentified uniformed police officer push an unidentified female civilian, causing her to fall in the street (**Allegation B**). At this time, § 87(2)(b) approached PO Keegan and § 87(2)(b) and PO Diaz ran toward § 87(2)(b) and struck him in the right side of his face with a closed fist (**Allegation C**). Following this initial punch, PO Diaz swung closed fists at § 87(2)(b)'s face approximately six times (**Subsumed within Allegation C**). After throwing these punches, PO Diaz allegedly told § 87(2)(b) to “shut the fuck up” (**Allegation D**). PO Diaz then allegedly used his right knee to strike § 87(2)(b) in the groin (**Allegation E**). PO Diaz handcuffed § 87(2)(b) and arrested him for § 87(2)(a) 160.50. § 87(2)(b) sustained swelling and bruising to his right eye from PO Diaz's initial punch. He did not seek medical treatment for these injuries (Board Review 01-02).

Mediation, Civil and Criminal Histories

This case was unsuitable for mediation due to § 87(2)(b)'s arrest and the existence of a lawsuit in regards to the incident. A notice of claim naming PO Diaz as the sole defendant was filed on behalf of § 87(2)(b) in the United States Eastern District Court of New York (Board Review 09). § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

This is the first complaint filed by § 87(2)(b) and § 87(2)(b) with the CCRB (Board Review 11-12).

§ 87(2)(b) was listed as a witness in one prior CCRB complaint. § 87(2)(b)

PO Diaz has been a member of the NYPD for five years and has been the subject of three prior CCRB complaints involving three allegations, none of which were substantiated. All three of PO Diaz's prior allegations were physical force allegations. PO Diaz was alleged to have punched civilians in the face in two of his three prior complaints (case 201111181 and case 201202911), and these allegations were closed as unsubstantiated (See officer history).

PO Sean Keegan has been a member of the NYPD for two years and has been the subject of three prior CCRB complaints involving five allegations, none of which were substantiated.

§ 87(2)(g)

Potential Issues

§ 87(2)(b) who is a minor, was not interviewed after numerous unsuccessful contact attempts to his mother, § 87(2)(b)

§ 87(2)(b)'s cousins, § 87(2)(b) and § 87(2)(b) also witnessed the incident, but they were not interviewed. Three calls were placed to the mother of these witnesses, § 87(2)(b). § 87(2)(b) scheduled two appointments and received text message reminders about both appointment dates. § 87(2)(b) failed to appear at the CCRB on both occasions.

During the third call to § 87(2)(b) she refused to schedule another interview and referred all further scheduling efforts to § 87(2)(b). § 87(2)(b) refused to schedule an interview for these witnesses and referred all further scheduling efforts to her civil attorney, § 87(2)(b), who was unsuccessful in arranging an interview with § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) also witnessed the incident. He is a minor, and his mother refused to cooperate with the investigation on his behalf. There were numerous other unidentified witnesses to the incident, and § 87(2)(b) named three witnesses, § 87(2)(b), § 87(2)(b), and § 87(2)(b) but did not possess last names or contact information for them. These witnesses were not interviewed.

Two school safety agents, SSA § 87(2)(b) and SSA § 87(2)(b) witnessed the incident. These school safety agents prepared memo book entries and criminal incident reports regarding the incident, but they confused the officers' names in that paperwork and identified PO Mendez as the subject officer of § 87(2)(b)'s allegations. Upon viewing the video footage of the incident, the school safety agents acknowledged that they mistakenly identified PO Mendez in their paperwork. All other evidence, including police documentation; the notice of claim; all other officer and civilian testimony; and the video footage of the incident, identified PO Diaz and PO Keegan as the subject officers. PO Diaz and PO Keegan also acknowledged that they were the subjects of § 87(2)(b)'s allegations.

Findings and Recommendations

Allegation A –Force: PO Sean Keegan used physical force against § 87(2)(b)

Prior to the incident, § 87(2)(b) and approximately 100 additional high school students from the § 87(2)(b) were involved in a fight at the corner of § 87(2)(b) in Brooklyn. Two school safety agents, SSA § 87(2)(b) and SSA § 87(2)(b) initially responded to the scene and attempted to detain § 87(2)(b) (Board Review 01 and 03-04). PO Mendez and PO Keegan arrived on the scene as SSA § 87(2)(b) and SSA § 87(2)(b) attempted to detain § 87(2)(b) and they observed § 87(2)(b) run away from the school safety agents down § 87(2)(b) (Board Review 06-07). PO Keegan, PO Mendez, and the school safety agents immediately pursued § 87(2)(b) and PO Keegan caught up to § 87(2)(b) on § 87(2)(b). Sgt. Cecchini and PO Diaz arrived on the scene at that time and approached § 87(2)(b) to assist PO Keegan (Board Review 05 and 08). § 87(2)(b) alleged that PO Keegan pushed § 87(2)(b) against a nearby fence with excessive force and then pulled him to the ground.

§ 87(2)(b) was not interviewed after his mother, § 87(2)(b) § 87(2)(b) failed to cooperate with the investigation on his behalf. Five calls were placed to § 87(2)(b) and two please call letters were sent to her. § 87(2)(b) scheduled one interview for § 87(2)(b) and was reminded of her appointment via text message, but she failed to appear for her interview. Additional contact attempts were made to § 87(2)(b) who is § 87(2)(b)'s aunt, in order to schedule § 87(2)(b) for an interview, but § 87(2)(b) referred all scheduling attempts to § 87(2)(b). Additional contact attempts were made to § 87(2)(b) but § 87(2)(b) was unsuccessful in scheduling an interview for § 87(2)(b). § 87(2)(b)'s statement was necessary to establish whether he resisted PO Keegan, whether PO Keegan pushed § 87(2)(b) into the fence with excessive force, and whether PO Keegan intentionally pulled § 87(2)(b) to the ground. § 87(2)(g)

Allegation B – Force: An officer used physical force against § 87(2)(b)

After PO Keegan allegedly pulled § 87(2)(b) to the ground, § 87(2)(b) observed an unidentified uniformed police officer use both of his hands to push an unidentified female civilian (Board Review 01). This incident occurred approximately 40 to 50 feet away from § 87(2)(b). The alleged push caused this unidentified female to stumble backward approximately four feet, make contact with another unidentified student, and then fall to the street on her right elbow. None of the officers or school safety agents observed any such incident, and the video footage does not show this incident (Board Review 02-08; See also the embedded video). The investigation was unable to identify the victim of this allegation because § 87(2)(b) could not provide any identifying information for her. § 87(2)(g)

Allegation C – Force: PO John Diaz used physical force against § 87(2)(b)

It is undisputed that PO Diaz struck § 87(2)(b) multiple times with closed fists (Board Review 01-08).

By all accounts, officer and civilian, PO Keegan and PO Mendez encountered a chaotic scene upon their arrival (Board Review 01-08). Approximately 100 high school students stood on the street and the sidewalk across the entire block surrounding the incident location. Approximately 20 to 50 of those students, including § 87(2)(b) approached within a few feet of PO Keegan as he detained § 87(2)(b). These students yelled loudly at the officers

throughout the incident. PO Mendez and PO Diaz repeatedly instructed these students to back away, and they complied only after numerous commands. The video footage was consistent with all officer and civilian testimony in depicting the chaotic nature of the incident (See embedded video).

According to § 87(2)(b) he approached within 10 feet of PO Keegan while he held § 87(2)(b) on the ground (Board Review 01). § 87(2)(b) complained that PO Keegan “was hurting” § 87(2)(b) and asked PO Keegan to “ease up.” § 87(2)(b) described his tone of voice as “hysterical” and raised louder than normal. § 87(2)(b) denied approaching PO Keegan from behind, interfering in any way with the arrest of § 87(2)(b) making any physical contact with PO Keegan, or attempting to stand in between PO Keegan and § 87(2)(b). While § 87(2)(b) stood near PO Keegan, PO Diaz allegedly punched the right side of his face near his right eye. PO Diaz then allegedly swung at least six closed fist strikes toward § 87(2)(b)s face, and § 87(2)(b) raised his hands in clenched fists in front of his face to defend himself. The majority of these strikes landed on § 87(2)(b)s right forearm because his arms were raised in front of his face to block the blows. One of these strikes landed on the front of § 87(2)(b)s nose. PO Diaz did not say anything to § 87(2)(b) during the altercation. § 87(2)(b) sustained a bruised and swollen right eye from PO Diaz’s initial punch, and his arrest photo from the incident confirmed the existence of his alleged injury (Board Review 14).

PO Diaz stated that he stood approximately 10 to 15 feet away from PO Keegan and § 87(2)(b) when he observed them on the ground (Board Review 05). At that time, he saw § 87(2)(b) and § 87(2)(b) approach within an arm’s length of PO Keegan with a “hurried pace,” and PO Diaz observed that there was no other officer near PO Keegan. PO Diaz described § 87(2)(b)s demeanor as “aggressive” due to the fact that § 87(2)(b) clenched his fists near his waist. § 87(2)(b) also pulled up his pants while moving toward PO Keegan. Based on his experience as a police officer and general life experience, PO Diaz interpreted § 87(2)(b)s action of pulling up his pants as him preparing to fight. PO Diaz was also concerned that PO Keegan’s gun was “exposed” because PO Keegan was bent over § 87(2)(b) with his hands on him. As a result, PO Keegan’s gun was on his right hip and was exposed to the possibility that § 87(2)(b) might attempt to seize the weapon. PO Diaz did not see § 87(2)(b) reach for PO Keegan’s gun, and PO Diaz stated that PO Keegan’s gun appeared to be properly holstered to his right hip. PO Diaz also believed that § 87(2)(b) intended to step in between PO Keegan and § 87(2)(b). PO Diaz did not see § 87(2)(b) take this action or make physical contact with PO Keegan, but he believed that § 87(2)(b) intended to do so because § 87(2)(b) approached very close to PO Keegan.

According to PO Diaz, he ran toward § 87(2)(b) and immediately pushed § 87(2)(b) using both hands to make contact with § 87(2)(b)s upper chest. PO Diaz pushed § 87(2)(b) based on the perceived threat to PO Keegan identified above, and he denied punching § 87(2)(b) on his initial approach. § 87(2)(b) stumbled into the nearby fence a result of the push. PO Diaz then observed § 87(2)(b) turn toward him with one clenched fist held near his waist. PO Diaz perceived this clenched fist to be a threat to his own safety; therefore, he swung a closed fist at § 87(2)(b)s stomach and shoulder area to subdue him. PO Diaz acknowledged throwing “less than three” additional punches toward § 87(2)(b)s stomach and shoulders within “fractions of a second” of one another. PO Diaz threw these punches due to § 87(2)(b)s “combative behavior.” PO Diaz described § 87(2)(b)s

§ 87(2)(b)

Allegation D – Discourtesy: PO John Diaz spoke discourteously to § 87(2)(b)

According to § 87(2)(b) PO Diaz grabbed his left arm after striking him, and Sgt. Cecchini grabbed § 87(2)(b)'s right arm (Board Review 01). § 87(2)(b) began to cry at that time, and PO Diaz allegedly said, "Shut the fuck up."

PO Diaz did not recall saying, "Shut the fuck up," and he did not recall using the word "fuck" in any context during the incident (Board Review 05). PO Diaz did not recall using profanity during the incident. None of the other officers heard PO Diaz say, "Shut the fuck up" (Board Review 06-08). The audio of the video footage did not capture any such comment (See embedded video and Board Review 02).

§ 87(2)(g)

Allegation E – Force: PO John Diaz used physical force against § 87(2)(b)

During his CCRB interview, § 87(2)(b) alleged that PO Diaz kned him in the groin using his right knee immediately after he said, "Shut the fuck up" (Board Review 01). In his notice of claim, § 87(2)(b) alleged that PO Diaz kned him in the chest area (Board Review 09). PO Diaz and Sgt. Cecchini then lowered him to the ground and placed him in handcuffs. Shortly thereafter, § 87(2)(b) was transported to the 75th Precinct stationhouse where he was charged with resisting arrest, obstructing governmental administration, unlawful assembly, and disorderly conduct.

PO Diaz did not recall kneeling § 87(2)(b) in the groin, and none of the other officers saw PO Diaz take this action (Board Review 05-08). The video footage did not show any such action, but the frame of the video was also partially blocked by the crowd near § 87(2)(b) (See embedded video and Board Review 02).

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date